

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of:)
)
Revitalization of the AM Radio Service) MB Docket No. 13-249
)

**Comments of Roger Bouldin
Bristol Broadcasting Company, Inc.
Bouldin Engineering**

As a consulting engineer who has filed numerous applications with the Commission and as General Manager of Bristol Broadcasting Company, Inc. (“Bristol”), which owns twenty-one full-power AM and FM broadcast stations and seven FM translator stations, I, Roger Bouldin, hereby submit these comments in response to the Commission’s Notice of Proposed Rulemaking – “Revitalization of the AM Radio Service” (MB Docket No. 13-249)(the “NPRM”). While the NPRM included a number of proposals for revitalizing the AM radio service, these comments will be limited primarily to the first of these proposals (“Open FM Translator Filing Window Exclusively for AM Licensees and Permittees”). I wish to express strong opposition to the proposal to open an FM translator filing window exclusively for AM licensees and permittees for the reasons delineated below.

Replacement Not Revitalization

It is a settled proposition that when programming is simulcast on both an AM and an FM signal, listeners prefer the clarity of the FM signal. This has also

been our experience¹ when using FM translators to rebroadcast AM stations. In each case our audience research showed that within a very short period of time after adding an FM translator to an AM station nearly all of the listeners that previously listened to the AM station had migrated to the FM translator. This was particularly true when the FM translator “originated” programming while the AM station was off the air (i.e. during nighttime hours). Rather than revitalizing the AM band, using an FM translator actually *creates* a new broadcast service which then *robs* the primary AM station of its remaining listeners and leaves continued operation of the AM transmitter a waste of money and spectrum. This is particularly true for lower powered local AM stations because an FM translator with a good antenna location can easily provide static-free coverage to all of the AM station’s audience. Thus, the FM translator does not revitalize the AM station but rather becomes a new low-power FM station. Accordingly, the Commission should not award this new service without fair opportunity for other parties to file expressions of interest and competing applications.

Ashbacker Rights Not Satisfied

In the NPRM the Commission sought comments as to whether an FM translator filing window could be limited to AM incumbents. The Commission tentatively concluded that allowing only AM incumbents an opportunity to apply for FM translators during the filing window would be consistent with the *Ashbacker* rights

¹ Bristol Broadcasting Company operates three AM broadcast stations (WPAD at Paducah, Kentucky, WNGO at Mayfield, Kentucky, and WNPC at Newport, Tennessee) that utilize FM translators for fill-in coverage and is under contract to purchase another FM translator for use with WFHG(AM). Bristol Broadcasting Company also operates several translator stations as “fill-in” translators for FM broadcast stations.

of potential applicants stating that the courts have held that the Commission can establish “threshold standards” to identify qualified applicants. However, establishing a threshold standard that is overly and unnecessarily restrictive would violate the spirit of the court rulings and the Communications Act itself. Allowing AM incumbents only would, I believe, create an overly restrictive threshold and violate the intent of the *Ashbacker* doctrine.

The original purpose for FM translator stations was to rebroadcast FM stations either to fill-in holes in the primary station’s coverage or under certain circumstances to extend the primary station’s coverage area (but never to originate programming). Yet it has been a decade since the Commission opened a window for filing applications for new translator stations to be used for this purpose. During that last filing window in 2003, the Commission received thousands of applications seeking FM translators to rebroadcast FM broadcast stations. [The Commission only last year commenced processing these applications after dismissing thousands of them. Processing of these 2003 applications will be discussed in more detail later in this filing.] The filings of these thousands of applications during the last window are within themselves bona fide expressions of interest in FM translators for rebroadcasting FM stations. Further, I assert, many FM broadcast station licensees, Bristol Broadcasting Company among them, would have during the years since 2003 filed for FM translators to provide fill-in coverage for FM stations but no opportunity was provided for them to do so. To open an FM translator filing window exclusively for AM licensees and permittees would unfairly disadvantage

those FM licensees. There has been no hearing and no presentment of evidence to demonstrate that the public would be better served by granting a license for an FM translator to an AM licensee rather than to an FM licensee.

While there are many AM stations that do provide good service to their communities, an examination of the records of the Commission's enforcement bureau would show that there is a plethora of AM stations that have failed to meet the most minimal standards of good broadcasting and public service. The enforcement records are rife with citations issued to AM licensees for failure to maintain main studio locations, for having non-functioning EAS systems, for being silent for extended periods without proper notice to the Commission, and for all sorts of technical violations. Many of these AM broadcasters maintain little or no meaningful presence in their communities of license. Indeed, some of the worst violators of Commission rules and regulations, some of the poorest providers of community service, some of the worst broadcasters are AM licensees. To argue that these AM licensees with their dismal community service records and their obvious disregard for Commission rules are better qualified to receive an FM translator license than some FM broadcasters who do adhere to the rules and who do provide quality service to their communities would be absurd.

While the Commission has the authority under *Ashbacker* to establish "threshold standards" to identify qualified applicants, this petitioner believes that the proposal to limit an FM translator filing window to only AM incumbents fails to establish meaningful "threshold standards." Instead this plan would limit

applicants to a “not necessarily qualified” class while excluding an obviously more qualified group of potential applicants. To satisfy *Ashbacker* the Commission, I believe, must establish “threshold standards” that result in the elimination of poorly qualified applicants in favor of the better qualified ones and that result in better service to the public. The present proposal which defines “standards” by *class* rather than *qualifications* would not meet that criteria and would therefore fail to meet the requirements of the *Ashbacker* doctrine and the Communications Act.

Disadvantage 2003 FM Translator Applicants

As noted above, the last FM translator filing window was opened in 2003, and thousands of applications were filed. The Commission took no action on those applications for ten years. Then last year as a prelude to the Low Power FM (“LPFM”) filing window the Commission dismissed or required the dismissal of hundreds of those applications and commenced processing the remain ones. Many of the applications were mutually exclusive requiring modifications to be made to the applications to make them grantable. Some of the applications were rendered un-grantable by FM allotment changes that occurred during the intervening years from 2003 to 2013. Bristol Broadcasting Company filed an application that ultimately fell into this later category.

In 2003 Bristol Broadcasting Company applied for an FM translator at Elizabethton, Tennessee, (see BNPFT 20030314BED) to serve as a fill-in translator for FM Station WAEZ(FM) at Greeneville, Tennessee. (The WAEZ(FM) signal suffers severe degradation in the Elizabethton area due to terrain

shielding.) However, in 2008 while Bristol's application (for Channel 275D) was still pending the Commission granted a community of license change and an upgrade in class to FM Station WVEK(FM) moving the station from Eastern Kentucky to nearby Weber City, Virginia, on Channel 275C3. When the Commission in 2013 began processing the 2003 translator application, Bristol was required to modify its application because it was now in close proximity to and co-channel with WVEK(FM). The Commission only allowed modifications for these applications to adjacent or IF channels (minor change modifications). Ultimately, due to contour separation requirements and LPFM preclusion considerations, Bristol was able to modify its application to specify an effective radiated power of only five watt utilizing a severely distorted pattern directional antenna on third adjacent Channel 272D.

Like Bristol Broadcasting Company, many applicants in the 2003 window were required to modify their applications to specify less than maximum facilities for their requested translator stations. None of the applicants were permitted to request channels that were not upper or lower adjacent channels or IF channels. Indeed, all existing FM translator licensees are precluded (except in the limited cases where the translator is displaced due to interference) from requesting non-adjacent channels for their translators even if such change in channel would afford the licensee the opportunity to have better facilities and provide better service to the public.

Should existing FM translator licensees not have at least an equal opportunity with AM licensees to request non-adjacent channels for their

translator stations when the non-adjacent channel would provide better facilities and coverage? To open an FM translator filing window exclusively for AM licensees would severely disadvantage existing translator operators who have limited facilities and cannot upgrade via a minor change application.

AM Operators Who Already Have Translators

Since 2007 when the Commission first started to allow FM translators to rebroadcast AM stations, hundreds of AM licensees (including Bristol) have expended large sums of money to purchase FM translators for use with their AM stations. Quite often a translator station had to be moved at additional costs so that its service contour would fit within the AM station's contour as required by the Commission's rules. Why should AM licensees and permittees who have not been diligent enough to purchase an FM translator have a *special* window opened to allow them to apply for one at virtually no cost? Under the Commission's proposal would AM stations that already utilize an FM translator be eligible to apply during the window for another translator station? Would AM licensees who already utilize FM translator stations be permitted to file for non-adjacent channels during the window to "upgrade" their translator facilities?

FM Band Overcrowding

In the last year alone the Commission has granted construction permits for thousands of new FM translators from the 2003 filing window and is currently beginning to grant construction permits for what is expected to be hundreds of new LPFM stations. This has raised concerns that interference issues will arise as is often the case when these new facilities (most of which are yet to be

constructed) go on air. There are already serious, and I believe warranted, concerns that the FM band is becoming overcrowded. Many FM broadcasters are fearful that adding these LPFM and translator stations on their adjacent channels and in their fringe coverage areas will create interference that is harmful to their listening audiences. Proposing an FM translator window for AM licensees adds to those concerns. I judge it prudent for the Commission to delay any further consideration of its proposal to open an FM translator window for AM licensees until after a majority of the already authorized new FM translators and LPFM's have been constructed and are on air. Only then will we know the full impact these new services will have on existing stations. It would certainly be unwise and counter to the public's interest to damage the viability of the FM band in a questionable attempt to revitalize the AM band.

Not All Stations Can Be Revitalized

The lack of audience for and poor revenue performance by some AM stations cannot be corrected solely by technical improvements. Often the cause of a scarcity of listeners for an AM station (and the corresponding low advertising revenues) is the poor programming content offered by the station. In many markets where there is a mix of FM and AM stations, all of the mainstream formats are taken by the FM stations leaving only niche and specialty formats for the AM stations. It is simply a fact that in most markets there are more radio stations than can be financial viable and there are too many stations for the available popular formats. Thus, the marketplace dictates that with an over

supply of stations some stations will struggle. Usually these struggling stations are the AM's and the lower powered FM's.

The Commission's plan assumes, and I think incorrectly, that there is a need or the ability to save all the AM stations that are failing. Adding FM translators to failing AM stations will not create new potential audience (population). At most, some audience may shift from one station to another. Certainly, adding FM translators to AM stations will not create new revenue in the market. Any new advertising revenue that flows to the once failing stations will come from other stations in the market. In other words, the failing stations would be propped up at the expense of the more financially stable stations.

It is also true that many of the struggling AM stations are owned and/or operated by people who are poor entrepreneurs. They have inherited, been given, or bought their AM stations for low prices because the AM stations have little value. Many have little or no knowledge about the broadcasting industry or the rules and regulations of the Commission. They provide poor programming, poor community service and operate their stations outside authorized parameters. They are simply bad businesspersons and their radio business fails. Attempting to "vitalize" their station operations at the expense of other broadcaster is not, I assert, a good idea, and granting them licenses for new services is ludicrous. At a very minimum an AM licensee should be required to demonstrate how it *has and how it will continue* to provide community service before it is award a new FM service through a window filing.

Without addressing the merits of the individual technical improvement plans including in the NPRM, I do believe that revitalization of the AM band should be limited to improvements in the AM technical standards, methodologies, and rules.

Conclusion

In light of the foregoing, the Commission should refrain from opening an FM translator filing window exclusively for AM licensees and permittees as part of its efforts to revitalize the AM band, and I urge that the proposal to open such a window be removed from further consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'RB G', is positioned above the printed name and affiliation.

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January 21, 2014